

REMARKS

Claims 1-9, 11, 13-15, 18-28 and 31 are currently pending in this application. Claims 10, 12, 16, 17, 29 and 30 have been canceled. Claims 1, 7, 13-15, 18-20 and 22 have been amended. Applicants have carefully reviewed the Office Action and respectfully request reconsideration of the claims in view of the remarks presented below.

Oath/Declaration

The Examiner rejected the inventor declaration for failing to comply with 37 CFR 1.63. The Examiner alleges the inventor declaration is defective because the declaration states that the inventor acknowledges a duty to disclose information which is material "to the examination of the application" rather than information material "to patentability" as defined in Section 1.56. Applicants respectfully disagree with the Examiner's rejection of the inventor declaration.

Applicants submit that 37 CFR section 1.63 previously required an acknowledgement of Applicant's duty to disclose information that is "material to the examination of the application". However, in a "Duty of Disclosure" rule change published at 1135 OG 13 (February 4, 1992), Rule 63 was changed so that its language tracked the "material to patentability" language of Rule 56.

In making this change, and in reply to Comment 38 at 1135 OG 17, the Office stated that the averments in oath or declaration forms presently in use that comply with the previous section 1.63 or 1.175 will also comply with the requirement of the new rules. The Office also stated, "Therefore, the Office will continue to accept the old oath or declaration forms as complying with the new rules." Applicants therefore submit that the as-filed inventor declaration which complies with the requirements of Rule 63 prior to the 1992 rule change also complies with the requirements of the current rule and should be accepted.

Moreover, the first page of the Duty of Disclosure Rulemaking as published at 1135 OG 13 (February 4, 1992) explains that an Applicant for a patent also has a duty

of candor and good faith in dealing with the Patent Office and that this duty is broader than the duty to disclose information material to patentability. Therefore, Applicants submit that the duty to disclose information material to the “examination” of the application (which includes the duty of candor and good faith) as recited in the inventor declaration for the subject application is broader than and includes the duty to disclose information material to the patentability of the application as required by the Examiner.

Applicants therefore submit that the as filed inventor declaration encompasses a broader duty of disclosure and complies with the requirements of 37 CFR 1.63. Applicants therefore request acceptance of the inventor declaration as filed and withdrawal of this objection.

Specification Objections

The disclosure was objected to for not including the serial number of the related patent application cited in paragraph [0001]. As indicated in the Amendments to the Specification above, paragraph [0001] has been amended to include the relevant serial number.

Claim Objections

Claims 7 and 10 were objected to for informalities. Claim 7 (and claim 22) has been amended to spell out the abbreviation IEGM. Regarding claim 10, the subject matter of it has been incorporated into independent claim 1 in a manner that resolves the antecedent basis objection cited in the Office Action.

Claim Rejections Under 35 U.S.C. §112

Claim 17 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claim 17 has been canceled.

Claim Rejections Under 35 U.S.C. §102

Claims 1-4, 6-9, 12, 14, 16, 17 and 20-28 were rejected under 35 U.S.C. §102(b). As indicated below, claims 1 and 20 have been amended in response to the indication of allowable subject matter. Accordingly these claims, along with their respective dependent claims 2-4, 6-9 and 21-28 are believed to be in condition for allowance. Claim 14 has been amended to depend from claim 18. As indicated below, claim 18 has been amended in response to the indication of allowable subject matter. Accordingly, claim 14 is believed to be in condition for allowance. Claims 12, 16 and 17 have been canceled.

Claim Rejections Under 35 U.S.C. §103

Claims 1-3, 5-9, 12-17, 20-29 and 31 were rejected under 35 U.S.C. §103(a). Claims 12, 16, 17 and 29 have been canceled. All remaining claims are believed to be in condition for allowance for the reasons presented above in the 35 U.S.C. §102 remarks and below, in the Allowable Subject Matter remarks.

Allowable Subject Matter

Claims 10 and 11 would be allowable if rewritten to overcome the claim objections, and to include all of the limitations of their base claim and any intervening claims. In lieu of rewriting claim 10 in independent form, claim 1 has been amended to include the limitations of claim 10. Claim 11 has been amended to depend from claim 1. Dependent claims 2-9 also depend from claim 1 and are believed to be in condition for allowance.


Claims 18, 19 and 30 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims. Claims 18 and 19 have been rewritten in independent form. In lieu of rewriting claim 30 in independent form, claim 20 has been amended to include the limitations of claim 30 and intervening claim 29. Dependent claim 21-28 and 30 depend from claim 1 and are believed to be in condition for allowance.

CONCLUSION

Applicants have made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. Therefore, allowance of Applicants' claims 1-9, 11, 13-15, 18-28 and 31 is believed to be in order.

Respectfully submitted,

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